IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN

TUESDAY, THE 23RD JANUARY, 2007 /3RD MAGHA, 1928

WP(C).No. 1663 of 2007(S)

PETITIONER:

ADVOCATE P.P.JOYI, AGED 59 YEARS,
S/O.LATE P.J.POULOSE, PERUMAYAN HOUSE,
BEHIND WEST CHURCH, ANGAMALLY P.O.,
PIN-682 3572.

BY ADV. SRI.P.P.JOYI (PARTY-IN-PERSON)

RESPONDENT:

STATE OF KERALA, REP. BY ITS
PRINCIPAL SECRETARY, DEPARTMENT OF HEALTH,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.T.B.HOOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON 23/01/2007 DELIVERED THE FOLLOWING:

V.K.BALI, CJ & M. RAMACHANDRAN, J.

W.P(C) NO. 1663 of 2007 - S

Dated this the 23rd day of January, 2007

JUDGMENT

Ramachandran,J:

The writ petition is stated to have been filed espousing public cause. Petitioner, a practising lawyer, feels that the private practice of the Government Doctors require to be altogether stopped. It is submitted that when a batch of writ petitions had come earlier, the right to address the court in these regions have been left open and the petitioner, according to him, is utilising the opportunity. He wants the Government to issue a model code of conduct for the doctors to attend patients in the emergency cases, immediately and without causing delay and also seeks for a declaration that private practice done by the Government Doctors is illegal. Ultimate request is to prohibit the Doctors from attending the case of any patients or their relatives. Consultation in their residence or at any place also should be totally prohibitted.

2. According to the petitioner, the Government Doctors do have liberal service conditions. He suggests that a doctor who attends a private institution is expected to work hard, but that is not there as far as the Government Doctors are concerned. Facility for private practice simultaneously offers a conduit for receiving bribery. They have job security, pension and provident fund; they can avail of leave to go abroad. Therefore, private practice, according to the petitioner, is at once irregular, against public interest and unethical.

3. We do not think, the petitioner has made out a case for interference. This is because even as of now, the Government Servants' Conduct Rules, 1960 which are rules issued in exercise of powers conferred on the State under Article 309 of the Constitution has already put in sufficient restrictions, however simultaneously ensuring that an absolute bar may not be in public interest. As pointed out by the Government Pleader, Rule 50 thereof provides that a Medical Officer employed under the Government is prohibitted

from maintaining or to have any interest in a private nursing home, hospital, medical store or shop or similar establishment. So also there is prohibition in examining or treating patients at Private Nursing Homes and the like even in an honorary capacity. However, he does have the liberty to examine or treat patients outside duty hours at his residence or at the residence of the patients, the restriction being that he is not expected to accommodate them as in-patients at his residence. The rule further explains that the Medical Officers are not allowed to have private practice during the hours of duty. It further states that for attending emergent cases, a Doctor may, with the permission of the Medical Officer-in-charge of the hospital where he is employed, and subject to the condition that alternate arrangements are made in the hospital, leave the hospital.

4. It is indeed required that a balancing approach is prescribed. A total ban of private practice may not be workable; rather it will not be conducive to any betterment of the situation. By virtue of his experience, a Doctor will have

to extend a helping hand at odd hours and at critical situations to the needy. He is also entitled to share his knowledge and expertise as the service conditions permit. Perhaps, some of the Medical Officers might be receiving large number of patients in the residence, tying up themselves. Also special consideration might be given to such patients while on the following days they come to attend the Government hospital. However, it is too difficult and a sensitive issue which can easily be checked excepting by self restrictions. The Government has imposed adequate restrictions which according to us, are relevant and reasonable. It may also be true that a tired doctor on the following day may not be as vigilant and efficient as his reputation goes.

5. The submission of the petitioner that there is misuse of the provision is not substantiated. Considering the materials that had been presented before us, it may not be possible to issue orders as have been pressed for.

The writ petition is therefore dismissed.

V.K.BALI
CHIEF JUSTICE

M.RAMACHANDRAN
JUDGE

Mbs/